

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

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THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W.D. OF TENN. MEMPHIS

CLARK D. KING,

Plaintiff,

v.

TIME WARNER COMMUNICATIONS;
UNIVERSAL COLLECTIONS SYSTEMS;
NICHOLSON, HACKEL & NICHOLSON
LAW FIRM; and DOUGLAS NICHOLSON,

Defendants.

No. 03-2016-D/V

ORDER GRANTING DEFENDANTS' MOTION TO
ENFORCE SETTLEMENT AGREEMENT (Dkt# 29)

Before the Court is a motion to enforce settlement agreement by all Defendants. For the reasons set forth below, Defendants' motion is GRANTED.

On February 22, 2005, all Defendants made an Offer of Judgment to Plaintiff, pursuant to Rule 68 of the Federal Rules of Civil Procedure for the sum of \$18,000.00. On March 4, 2005, Plaintiff's and Defendants' counsel agreed to execute a settlement agreement. Delivery of the settlement check was tendered to Plaintiff, and the check contained "settlement of all claims" language on its face. A Release and Consent Order of Dismissal with Prejudice were contemporaneously submitted to Plaintiff at that time. Plaintiff's counsel was instructed not to endorse the settlement check if the settlement was not agreeable. On March 30, 2005, Plaintiff

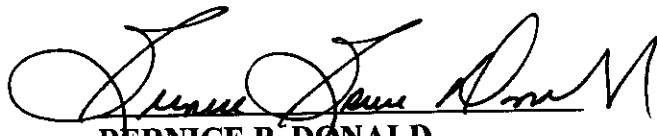
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moved the Court to enter judgment in this matter. On or about March 31, 2005, Plaintiff and his counsel endorsed and deposited the settlement check. On May 4, 2005, this Court entered judgment. To date, Plaintiff has not returned the Release or Consent Order of Dismissal with Prejudice documents to Defendants.

Plaintiff contends that the \$18,000.00 check represented a Rule 68 Offer of Judgment and not settlement proceeds. Brock v. Scheuner Corp., 841 F.2d 151 (6th Cir. 1988), provides that a settlement agreement is enforceable even where the agreement has not been reduced to writing, and courts have the authority and equitable power to enforce these agreements. Brock, 841 F.2d at 154. The Court heard arguments of counsel in open court on the matter. The Court finds that the language "settlement of all claims" of the front of the check was clear and unambiguous, that the check represented settlement proceeds. By negotiating the check, Plaintiff accepted the funds as settlement proceeds. Accordingly, this Court vacates its May 4, 2005, entry of judgment in this matter and dismisses the case based on the parties' settlement agreement.

IT IS SO ORDERED this 13th day of July, 2005.


BERNICE B. DONALD
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 37 in case 2:03-CV-02016 was distributed by fax, mail, or direct printing on July 15, 2005 to the parties listed.

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Honorable Bernice Donald
US DISTRICT COURT